

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the matter of:

Petition for Declaratory Ruling  
Concerning the Bundling of Local  
Telephone Service with Long Distance  
Service

CG Docket No. 03-84

**REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES  
COMMISSION AND THE PEOPLE OF THE STATE OF  
CALIFORNIA ON THE PETITION OF LINDA THORPE FOR A  
DECLARATORY RULING CONCERNING THE BUNDLING OF  
LOCAL TELEPHONE SERVICE WITH LONG DISTANCE  
SERVICE**

**I. INTRODUCTION**

The California Public Utilities Commission and the People of the State of California (CPUC or California) submit these Reply Comments to the Federal Communications Commission (FCC or Commission) on the Petition for Declaratory Ruling Concerning the Bundling of Local Telephone Service with Long Distance Service (Petition) filed by Linda Thorpe. On March 27, 2002, the Commission released a Public Notice (PN), DA 03-867, seeking comments on the following three issues: 1) whether the state claims set forth by Petitioner in the complaint are preempted by the Communications Act giving exclusive jurisdiction to the Federal Communications Commission; 2) whether local telephone service providers may provide local service only to their customers, or must by virtue of

their filed tariff rates or otherwise, bundle local service with long distance service, even whether a customer has no need for long distance service; and 3) if long distance service is not required to be bundled with local service in all events, if the practice of bundling these services is a violation of the Communications Act.

In accordance with the PN, CPUC herein responds to the comments submitted by local exchange carriers, competitive local exchange carriers and telecommunications associations/organizations.

## **II. DISCUSSION**

### **A. Subscriber Line Charge and Presubscribed Interexchange Carrier Charge**

According to the Petitioner's Complaint filed with the United States District Court for the Middle District of Florida against GTE Corporation, GTE Florida, Inc, AT&T Corp., Sprint-Florida, Inc., and MCI Network Services, Inc. ("Defendants"), Petitioner alleges that the Defendants imposed long distance and the related long service distance service charge without her consent.<sup>1</sup> Petitioner alleges that GTE, her local exchange service provider, installed a second telephone line at her residence to be used exclusively for dial-up Internet access service.<sup>2</sup> She claims that she was wrongfully charged a carrier line charge or the universal connectivity charge for this line.<sup>3</sup> The Petitioner argues that these charges are not

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<sup>1</sup> Petition for Declaratory Ruling on Issues Contained in "Thorpe v. GTE," United States District Court for the Middle District of Florida, Case No. 8:00 – CV-1231-T-17 EAJ, p. 6.

<sup>2</sup> *Id.* at p. 2.

<sup>3</sup> Petitioner's Response to GTE Florida Inc. and AT&T Corp's Dispositive Motion to Dismiss, p. 11.

mandated by law or regulation.<sup>4</sup>

Contrary to Petitioner's assertions, many commenters state that the Petitioner is required to pay certain federal carrier line charges. Under the FCC's current rules, all subscribers of local wireline service are required to pay subscriber line charge (SLC), regardless of whether or not they presubscribe to long distance service. The SLC is a monthly charge imposed on all subscribers irrespective of the number or the type of calls the subscribers place or receive.<sup>5</sup> According to Cbeyond Communications, Pac-West and US LEC Corp, the D.C. Circuit Court in National Ass'n of Regulatory Util. Commissioners, held the following:

“A subscriber who does not use the subscriber line to place or receive [interstate]calls imposes the same NTS costs as a subscriber who does use the line . . . Thus, simply by requesting telephone service, the subscriber “causes” local loop costs, whether it uses the service for intrastate or interstate calls.”<sup>6</sup>

The purpose of the SLC is to allow local telephone companies to recover their costs of providing interstate facilities. Under the FCC's access reform plan, \$3.50 is the maximum charge for primary residential lines and \$6.07 for additional lines.<sup>7</sup>

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<sup>4</sup> Id.

<sup>5</sup> Federal Communications Commission Consumer News Alert on Federal Subscriber Line Charge, p. 2.

<sup>6</sup> Comments of Cbeyond Communications, Inc., Pac-West Telecomm and US LEC Corp., p. 6.

<sup>7</sup> Id. at p. 1.

The FCC also regulates Presubscribed Interexchange Carrier Charge (PICC). The PICC is a charge that long distance companies pay to local telephone companies to help them recover the costs of providing the local loop.<sup>8</sup> A long distance company pays this charge for each residential and business telephone line presubscribed to that long distance company.<sup>9</sup> If a consumer or business has not selected a long distance company for its telephone lines, the local telephone company may bill the customer or business for the PICC.<sup>10</sup>

Based on these rules, CPUC agrees with Verizon Florida and AT&T that the Petitioner is obligated to pay the SLC even if she does not make any long distance phone calls or subscribes to long distance service. Not having long distance service does not exempt her from paying the tariffed SLC under the FCC's current rules. With respect to the PICC, the Petitioner's local exchange service provider is authorized to assess the PICC if she does not have a presubscribed long distance service provider.

Because the Petitioner's state claims concern the reasonableness of the SLC and the PICC tariffs, MCI comments that her state law claims are barred by the filed-rate doctrine. According to MCI, the filed rate doctrine bars all state law claims that pertain to both price and non-price aspects of telecommunications services.<sup>11</sup> AT&T states in its Comments that, under the filed-rate doctrine, the

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<sup>8</sup> FCC's Fact sheet of Presubscribed Interexchange Carrier Charge dated July 13, 2000, p. 1.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Comments of MCI WorldCom Network Services, Inc., p. 4.

terms of a carrier's tariffs conclusively and exclusively establish the rights and obligations between the carrier and its customers.<sup>12</sup> Sprint Corp. similarly states that "the rate of the carrier duly filed is the only lawful and that deviation from it is not permitted upon any pretext."<sup>13</sup> To the extent that the Petitioner's claims concern the reasonableness of the federally-prescribed SLC and the PICC, the FCC should address the Petitioner's claims because these are interstate charges, which are governed and regulated exclusively by the FCC.

### **B. Local Service Only**

In her complaint, the Petitioner also claims that GTE assigned AT&T as her long distance service provider even though she was not planning to make any long distance telephone calls on her second line, and without her consent. The New Jersey Division of Ratepayer Advocate states in its Comments that a customer who wants local service only cannot be denied the option to select no long distance carrier.<sup>14</sup> This option is also known as "PIC NONE." Both MCI and AT&T also state in their comments that the Petitioner has a right not to presubscribe to long distance service. They state that the Petitioner can, instead, make interstate calls using access codes or dial around products.<sup>15</sup>

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<sup>12</sup> Comments of AT&T Corp., citing AT&T v. Central Office Tel., Inc., 524 U.S. 214,221-26(1998), p. 3.

<sup>13</sup> Comments of Sprint Corp., citing ICOM Holding, Inc. v. MCI WorldCom, Inc., 238 F.3d 219,221 (2<sup>nd</sup> Cir. 2001), p. 5.

<sup>14</sup> Comments of the New Jersey Division of the Ratepayer Advocate, p. 2.

<sup>15</sup> Comments of A&T Corp, p. 11, Comments of MCI WorldCom Network Services, Inc., p. 7.

The CPUC agrees with these commenters that a customer may elect to have “no PIC” option, in which case the customer does not have to presubscribe to long distance service, but instead can have local service only. It would be unlawful for GTE, or any other long distance carrier, to force the Petitioner to choose a long distance service provider if she does not wish to. The Petitioner should have the ability to opt out of the PIC assignment and have local service only.

**C. Bundling of Local Telephone Service with Long Distance Service**

The PN asks for comments as to whether the bundling of local service with long distance service is a violation of the Communications Act, if the long distance service is not required to be bundled with the local service in all events. The majority of the commenters state that the bundling of local telephone service with long distance service is not a violation of the Federal Communications Act. Cbeyond Communications, Pac-West Telecomm, and US LEC Corp. state in their joint comments that the Commission “removed previously restriction on the bundling of local exchange and interexchange services with customer premise equipment.”<sup>16</sup> Worldnet Telecommunications, Inc., points out that “the ultimate goal of Section 271 of the Act is enable Regional Bell Operating Companies (“RBOCS”) that were prohibited from offering bundling service under the Modification of Final Judgment to provide such service when they demonstrate

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<sup>16</sup> Comments of Cbeyond Communications, LLC, Pac-West Telecomm, Inc. and US LEC Corp. citing CPE Bundling Order, p. 7.

that they meet the criteria set forth in Section 271(c)(2).”<sup>17</sup> The CPUC agrees with these commenters that the bundling of local exchange service with long distance service is generally permissible under the Act. In California, both Verizon California, Inc. and SBC California offer bundled local and long distance services.

Although long distance carriers are not prohibited from offering bundled local and long distance services, the carriers must also make each of these services available on a stand-alone basis. The customers should have the option to subscribe to these telecommunications services on a bundled or on a stand-alone basis.

### **III. CONCLUSION**

For all of the foregoing reasons, the CPUC believes that the FCC’s current rules require all subscribers to pay the SLC even if they do not have long distance service. With respect to the PICC, the FCC’s rules allow local telephone companies to assess the PICC on any subscriber who has declined to select a long distance carrier. The CPUC also believes that the FCC’s rules clearly state that all customers should have “no PIC” option. Lastly, while the Federal Communication Act permits the bundling of local service with long distance services, the CPUC believes that subscribers should also have the option to purchase these service on a stand-alone basis.

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<sup>17</sup> Comments Worldnet Telecommunications, Inc., p. 4.

Respectfully submitted,  
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By: /s/ SINDY J. YUN

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